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Financing of the International Residual Mechanism for Criminal Tribunals

Construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch

Report of the Secretary-General

Summary

The present progress report is the fourth on the construction of a new facility for the International Residual Mechanism for Criminal Tribunals, Arusha branch, submitted pursuant to paragraph 12 of General Assembly resolution 68/267. It provides an update on the progress made on the project since the issuance of the previous report of the Secretary-General (A/68/724).

As the project enters its fourth year, considerable progress continues to be made. Construction is anticipated to begin in February 2015, with the procurement process for construction services having reached its final stage. This milestone is the result of the timely implementation of a number of key activities. Specifically, since the issuance of the previous report: (a) the grant of land from the United Republic of Tanzania free of charge to the United Nations was formalized on 5 February 2014; (b) on 26 February 2014, the United Nations entered into a contract with the architectural consultant; (c) detailed design documents and tender documents were completed in early September 2014; and (d) the request for proposal for construction services was issued shortly thereafter.

The project team continues to be focused on executing the project within its tight schedule and within the approved budget. Actions undertaken to that end during the reporting period included the concurrent scheduling of design work and tender preparation to prevent delays in the issuance of the request for proposal for construction services; the confirmation of programmatic and functional requirements during the design stage in order to avoid changes in the design and/or scope of the project during construction; the expeditious completion of the evaluation of proposals for construction services; and the advance issuance of a draft form of contract with the request for proposal during the procurement process for construction services and the receipt of comments from bidders to prevent protracted negotiations.

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I. Background

1. The International Residual Mechanism for Criminal Tribunals commenced its mandate on 1 July 2012, in accordance with Security Council resolution 1966 (2010). The Mechanism has two branches: the Arusha branch, which started on 1 July 2012 to continue essential functions of the International Criminal Tribunal for Rwanda, and The Hague branch, which commenced on 1 July 2013 with the assumption of parallel functions derived from the International Tribunal for the Former Yugoslavia.

2. The operations of the Mechanism at both branches commenced on time and without any gap in the provision of services as a result of the transition. Well into its second biennium, the Mechanism continues to perform its functions as a small and efficient institution, as envisaged in its founding resolution.

3. The mandate of the Mechanism comprises: (a) continuous activities, including witness protection, supervision of the enforcement of sentences, archive management, the tracking of fugitives and assistance to national jurisdictions; and (b) ad hoc activities, consisting primarily of the conduct of trials, appeals and other judicial activities falling under the jurisdiction of the Mechanism.

4. The Arusha branch is currently co-located with the International Criminal Tribunal for Rwanda in the Arusha International Conference Centre compound in Arusha, United Republic of Tanzania. While the Centre has provided adequate support for the activities of the International Criminal Tribunal for Rwanda, it is unsuitable for the specific programmatic and functional requirements of the much smaller Mechanism. The inadequacy of these premises is caused primarily by certain structural features that do not, and cannot be made to, meet minimum, internationally recognized archival standards or address security risks, which are exacerbated by the progressive reduction of the United Nations presence in the compound.

5. The project for the construction of a new facility for the Arusha branch of the Mechanism commenced in January 2012, following the adoption by the General Assembly of its resolution 66/240 A. In that resolution, the Assembly decided to appropriate an initial amount of $3 million to cover expenses related to the conceptual design phase of the project. At the second part of the resumed sixty-sixth session of the Assembly, the Secretary-General submitted his first report on the project (A/66/754), providing detailed information on a comprehensive project management plan, including programmatic and functional requirements, a conceptual design and key milestones of the project, from design to occupancy.

6. In response to the request made by the General Assembly in its resolution 66/240 B, a second report of the Secretary-General on the project (A/67/696) was submitted at the first part of the resumed sixty-seventh session of the Assembly. It provided detailed information on key decision points regarding the conceptual design, project plan and overall cost estimate of the planned new facility, as well as efforts to reduce the duration of the project.

7. Following the issuance of the second report of the Secretary-General, the General Assembly, in its resolution 67/244 B, welcomed the progress made in the implementation of the mandates related to the construction of the facility and authorized the activities related to all phases of that construction.

8. The Secretary-General submitted a third progress report updating Member States on the advancement of the project (A/68/724), which was considered by the General Assembly at the first part of its resumed sixty-eighth session. In its resolution 68/267, the Assembly took note of the report and requested the Secretary-General to submit a progress report at the first part of its resumed sixty-ninth session on the implementation of the project, including project expenditures and total costs.

9. The present report provides an update on the progress made on the project since the issuance of the third report of the Secretary-General.

II. Progress made on the project during the reporting period

A. Cooperation with the United Republic of Tanzania

10. Cooperation between the Mechanism and the Government of the United Republic of Tanzania on the project continues to be excellent, and is fostered by frequent contact and information-sharing, including in relation to technical requirements and timelines.

11. On 5 February 2014, the Supplementary Agreement to the Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals for the Premises of the Mechanism was signed. The Supplementary Agreement, inter alia, formalized the grant of land from the Government of the United Republic of Tanzania to the United Nations and its commitment to provide temporary and permanent access roads and utilities to the site of the new facility, free of charge to the United Nations.

12. As required under the Supplementary Agreement, on 17 November 2014 the Government of the United Republic of Tanzania issued a certificate of occupancy to the Mechanism granting it exclusive right of occupancy of the site for a term of 99 years, free of any annual rental charges or other fees to the United Nations.

13. At the time of reporting, the provision of a temporary access road and utilities to the site remained pending. The Secretary-General expresses his appreciation to the Government of the United Republic of Tanzania for its cooperation thus far and looks forward to the completion of the access road and utilities, pursuant to the terms of the Supplementary Agreement, so that the construction work may be completed on schedule.

B. Detailed design

14. On 26 February 2014, the Mechanism concluded an agreement with an architectural and engineering consulting firm that has ample and relevant international experience and is based in the United Kingdom of Great Britain and Northern Ireland (the architectural consultant), which has partnered with a sub-consultant that operates out of Kampala and is focused on East Africa. A business presence in Africa was a key requirement in the process of selecting the architectural consultant, in order to ensure the application of local knowledge and capacity in the implementation of the project.

15. The detailed design conformed to the contractual timeline, the authorized budget and the conceptual design. Key to this achievement were a number of strategies and the application of lessons learned from other capital projects undertaken by the Secretariat. First, the Mechanism, with the support of the Overseas Property Management Unit of the Office of Central Support Services, worked extensively with the architectural consultant to refine the conceptual design from the beginning of the process to the completion of the detailed design, while ensuring that the original concept remained intact. Second, certain phases of the design were made to overlap, which allowed work on the design and tender documentation to run concurrently, rather than consecutively. Third, the Mechanism project team engaged proactively with internal and external stakeholders to further clarify and confirm programmatic and functional requirements with the architectural consultant. This approach was based on lessons learned from other capital projects in the region, in order to minimize the risk of changes in the scope and/or design of the project during construction.

16. Key elements of the design remain as presented in the second progress report (A/67/696). The centrepiece of the design is a single tree — representing justice in many parts of Africa — which is located in the middle of a three-sided courtyard. The three main buildings, each representing separate yet equally important functions of the Mechanism, are simple and minimalistic in both form and detail, in line with the lean and efficient nature of the Mechanism. Placed to take advantage of the natural conditions of the site, each building possesses strong horizontal elements, intended to emphasize the horizon and blend into the surrounding environment. The design incorporates and emphasizes the use of locally available materials and construction methods common to the region. Computer-generated renderings of the completed detailed design are provided in annex I to the present report.

17. The design takes into full consideration the Convention on the Rights of Persons with Disabilities with respect to the provision of accessible building features. These include accessibility for staff and visitors in working areas, public areas and the courtroom. Energy efficiency remains an important objective of the project, and energy-efficient installations have been used where possible and cost-efficient.

Environmental impact assessment

18. In accordance with existing legislation of the host country, the architectural consultant conducted an environmental impact assessment for the project. This assessment, which was based on the detailed design, concluded that no significant environmental impacts were expected to occur as a result of construction activities. During construction, general mitigation measures will be the responsibility of the construction contractor, which, in addition to abiding by all relevant existing national regulations, will be required to submit and implement an environmental management plan. The Secretary-General does not anticipate that any additional environmental measures will need to be undertaken at United Nations expense during construction, as existing arrangements appear to be sufficient. Nevertheless, mitigation measures and impacts will continue to be monitored by both the project team and the construction contractor.

C. Procurement activities

Solicitation of architectural consultant

19. On 26 February 2014, a contract with the architectural consultant was concluded for the provision of detailed design and tender documents, and construction management services once construction is under way.

Solicitation of construction services

20. As the tendering and procurement processes for the construction firm required specialized expertise in construction-related procurement, which neither the Mechanism, the International Criminal Tribunal for Rwanda nor the International Tribunal for the Former Yugoslavia possessed, this exercise was handled directly by the Procurement Division at United Nations Headquarters, through a dedicated procurement officer. This permitted the sourcing process for construction services, including market research and surveys, to begin in March 2014.

21. The solicitation exercise for construction services was carried out with an expression of interest issued in May 2014. To ensure open competition and the geographical diversity of potential qualified vendors, the expression of interest was published in both print and electronic media at the local, regional and international levels.

22. Following the timely completion of the detailed design and construction documents by the architectural consultant, the request for proposal for construction services was issued on 16 September 2014, in line with the project schedule. A bidders' conference was held in Arusha in October 2014 to enable potential vendors to inspect the site physically so that location-specific costs could be incorporated into their bids. By providing an opportunity for bidders to ask questions and receive clarifications regarding the request for proposal documents, the conference also helped to ensure that potential vendors fully understood the scope and requirements of the project, enabling them to accurately price and prepare their technical and commercial proposals.

23. The evaluation of responses to the request for proposal was completed in December 2014, and at the time of reporting the procurement exercise was in its final phase and expected to be completed shortly.

24. The Mechanism remains committed to continuing to ensure the application of local knowledge and capacity in the implementation of the project. As with the solicitation of the architectural consultant, a key requirement in the selection process for construction services was an established local business presence in Africa. This was aimed at ensuring that the firm had experience with shipping, importation and the sourcing of labour and materials in the region, as well as with prevalent local design and construction practices, all of which are critical elements for the successful and timely completion of construction.

III. Project accountability

A. Governance and project management

Project team

25. The project team is primarily responsible for the overall coordination and oversight of the project. The Assistant Secretary-General, Registrar, of the Mechanism is the project owner. The Registrar plays a leading role in ensuring full compliance with United Nations oversight instruments and the efficient implementation of the project. He benefits from the input of the President and the Prosecutor of the Mechanism and the technical guidance and support provided by the other members of the project team, Mechanism staff and various departments and offices of the Secretariat, as well as the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia.

26. The Registrar is assisted by the Head of Registry, Arusha branch, who provides day-to-day leadership of the project on the ground and engages with government authorities at both the regional and national levels. He also oversees the coordination and provision of support from relevant Mechanism units and the Tribunals, and maintains liaison with regional and international entities based in the United Republic of Tanzania.

27. The dedicated Project Manager, whose recruitment resulted from one of the lessons learned in recent capital projects undertaken by the Secretariat, provides integrated management and day-to-day coordination of the project, ensuring the timeliness and efficiency of action. Since her arrival in Arusha in April 2013, the Project Manager has advised the Registrar and the Head of Registry, Arusha branch, and kept them fully briefed on developments in the project, including achievements as well as any potential issues or challenges.

Cooperation with stakeholders

28. Since the issuance of the previous report of the Secretary-General (A/68/724), the project has continued to benefit from the commitment and cooperation of many entities of the Secretariat, in particular the Overseas Property Management Unit and the Procurement Division, both within the Office of Central Support Services, and the Office of Legal Affairs.

29. The Mechanism continues to work in close cooperation with the Office of Central Support Services, which has provided guidance and support with regard to key aspects of project implementation and ensured that lessons learned and best practices from other capital projects have been taken into consideration and incorporated to the greatest extent possible into the project. As the conceptual design for the project was exceptionally developed in-house by the Overseas Property Management Unit, its involvement during the design phase proved vital to ensuring that the detailed design remained consistent with the conceptual design as contained in the second report of the Secretary-General (A/67/696).

30. The Mechanism and the Overseas Property Management Unit maintain liaison on at least a fortnightly basis, but often much more frequently, by way of videoconferences, conference calls, meetings and correspondence. As the project has progressed, discussions between the Mechanism and the Unit have included

other stakeholders such as the Procurement Division and the Office of Legal Affairs, as needed.

31. The Mechanism has engaged extensively with the Procurement Division through its dedicated procurement officer and senior management. The Division has provided direct assistance, guidance and leadership in the procurement of the contracts for both the architectural and the construction services.

32. Over the past year, the Office of Legal Affairs has continued to provide wide-ranging legal support and assistance to the Mechanism, which has been crucial to safeguarding the timeline of the project. The Office led negotiations with the Government of the United Republic of Tanzania to expeditiously finalize the Supplementary Agreement as well as the certificate of occupancy. The Office also provided support to the Mechanism by preparing a tailor-made contract for the architectural consultant and adapting an industry-standard form of contract for construction services to the specific needs of the project. The use of a standard form of contract familiar to local contractors is drawn from a lesson learned from other recent capital projects undertaken by the Secretariat in the region.

33. The International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia have continued to offer technical and administrative assistance to the project, in particular in the areas of security, telecommunications, finance, human resources and procurement. As the detailed design developed, this close inter-institutional collaboration ensured that all design requirements and applicable best practices were incorporated, particularly in the areas of security, courtroom services and information and communications technology.

Risk management

34. Since the issuance of the previous report of the Secretary-General (A/68/724), the initial project risk register has been finalized. This key tool identifies various types of project risk based on 9 focus areas (technical, administration, procurement and contracting, support, governance, host country implementation, stakeholders, safety and security, and other areas) and 11 categories (planning, budget/finance, scope, schedule, legal, site parameters, design, construction, handover, operation and maintenance, and general). Risks and their scores will continue to be regularly reviewed and updated. The majority of risks identified at this stage are qualitative and are scored according to their likelihood (improbable, could happen or probable) and level of impact (low, medium or high). Mitigation actions have been developed on the basis of the characterization of the risk (minor, intermediate or critical) and are closely monitored. As the project moves into the construction phase, it is anticipated that cost-related risks can be more accurately quantified and assessed. The register improves the likelihood of successfully achieving the objectives and planned outputs of the project by enabling the project team to make calculated, risk-based decisions.

35. As the project advances, favourable external factors will also be needed for the success of the project, such as the availability of access to and utilities at the site, the availability and economical costs of particular materials, and no disruptions to the construction as a result of adverse weather conditions or force majeure. Unfavourable external risks may still occur despite the collective best efforts of the United Nations, the architectural consultant and the construction company eventually engaged. Nevertheless, pursuant to paragraph 5 of resolution 68/267, the

Secretary-General continues to closely monitor the project and undertake any measures necessary to identify and mitigate potential risks, in order to ensure that the project is completed within the overall timeline and budget approved by the General Assembly in resolution 67/244 B.

B. Project oversight and audits

36. The General Assembly, in resolution 67/244 B, requested the Secretary-General to entrust the Office of Internal Oversight Services (OIOS) with ensuring effective oversight of the implementation of the project. Accordingly, the Assistant Secretary-General, Registrar, of the Mechanism requested OIOS to arrange for a continuous audit of the project in order to ensure that the advice and recommendations of OIOS are systematically considered and incorporated into the implementation of the project.

37. As part of this arrangement, throughout 2013 and 2014, the Mechanism project team in Arusha met periodically with the Chief Resident Auditor of the International Criminal Tribunal for Rwanda and provided him with requested project documents and files, in order to ensure that OIOS was kept well informed of the project and its status, even before the commencement of the formal audit. The first formal audit of the project, focused on planning and governance, began in December 2014. This audit is the first step in a three-stage process scheduled to accompany the project through its immediate post-occupancy stage. OIOS has committed to reporting audit results to the General Assembly through the annual report of the Office.

38. The Mechanism expresses its appreciation for the opportunity to regularly brief the General Assembly, both formally and informally, regarding the progress of the project. The Secretary-General has implemented and will continue to implement the recommendations of the General Assembly and highly values its feedback and guidance as an important aspect of the project oversight structure.

IV. Project schedule

39. At the start of the project in 2012, its duration was estimated to be five years and three months, with completion in the first quarter of 2017, as originally reported in the first report of the Secretary-General (A/66/754).

40. In accordance with the request from the General Assembly to reduce the time needed to complete the construction, the project team shortened the duration of the project to four years, reflecting a reduction of 15 months, with completion in December 2015, as reported in the second report of the Secretary-General (A/67/696).

41. As indicated in the third report of the Secretary-General (A/68/724), the project experienced a slight delay of approximately two months in entering into a contract with the architectural and engineering design consultant.

42. A number of strategic measures have been taken by the Mechanism in an effort to overcome the above-mentioned delays. During the design stage, the project team scheduled concurrently the design work and tender preparation carried out by the architectural consultant, which prevented further delays in the issuance of the

request for proposal for construction services. During the procurement of construction services, the Mechanism collaborated closely with the Procurement Division, the Overseas Property Management Unit and the Office of Legal Affairs, ensuring the timely completion of the solicitation process. Additionally, the conduct of a pre-bid conference and site visit in Arusha helped to ensure the provision of accurate bidder proposals.

43. Negotiations with the selected bidder are expected to commence soon and to be finalized in early 2015. In order to mitigate the risk of protracted negotiations, and on the recommendation of the Procurement Division, the Mechanism issued the draft form of contract during the tender period, requesting comments from bidders. This has enabled the United Nations to address in advance any concerns that contractors might have.

44. Following the completion of the negotiations, construction work is anticipated to begin in February 2015, instead of January, subject to the completion of a temporary access road and connection to utilities. Construction is expected to last 12 months, resulting in occupancy in early 2016. This reflects an additional four weeks compared with the schedule contained in the previous report of the Secretary-General (A/68/724). A revised project schedule is set out in annex II to the present report.

45. The Mechanism has already begun to take measures to reduce the risk of delays during construction. Programmatic and functional requirements were confirmed during the design stage in order to minimize the risk that changes in the design and/or scope of the project would occur during the execution of the work. The requirement that the construction contractor have experience in the region is expected to assist in preventing delays due to importation procedures or the sourcing of labour and materials.

V. Project expenditures and costs

46. The General Assembly, in resolution 67/244 B, authorized the Secretary-General to establish a multi-year special account to record income and expenditures for the construction of the facility. It also noted that additional requirements, above the $3 million previously appropriated pursuant to its resolution 66/240 A, should be included in the proposed budget for the Mechanism for the biennium 2014-2015. The Secretary-General therefore included additional requirements in the amount of $5,787,700 in his proposed budget for the Mechanism for the biennium 2014-2015 (A/68/491), which was approved in full by the Assembly in its resolution 68/257. The total budget approved for the project amounts to $8,787,700.

A. Expenditures to date

47. The table below shows actual expenditures up to 31 December 2014 and projected expenditures during the remainder of the project.

Actual expenditures and projected expenditures, 2013-2015

(United States dollars)

Description	*Approved*[a]	*Actual expenditure*		*Projected expenditure from January 2015 to completion of project*	*Total*
		2013	*2014*		
Construction	6 365 887	–	2 912	6 362 975	6 365 887
Architect and project management					
Architect fees[b]	636 589	–	636 589	–	636 589
Project supervision and management[c]	635 800	155 919	166 560	313 321	635 800
Travel[d]	99 086	12 396	68 179	18 511	99 086
Subtotal	**1 371 475**	**168 315**	**871 328**	**331 832**	**1 371 475**
Total project cost	**7 737 362**	**168 315**	**874 240**	**6 694 807**	**7 737 362**
Contingency[e]	1 050 371	–	151 680	898 691	1 050 371
Overall costs (inclusive of contingency)	**8 787 733**	**168 315**	**1 025 920**	**7 593 498**	**8 787 733**

[a] Approved budget as presented in A/67/696, annex II.

[b] Reflects the cost of hiring an external architectural consultant firm to produce detailed construction documents, perform construction administration duties and assume the responsibility of the architect of record.

[c] Reflects the cost of hiring a project manager for the day-to-day management and coordination of project activities.

[d] Reflects the cost of the travel of staff between New York, The Hague and Arusha to provide technical assistance to the project.

[e] Calculated at 15 per cent of the construction costs and architect fees (which is a percentage of the construction costs).

48. Expenditures as at 31 December 2014 amounted to $1,194,235. Of this, an amount of $151,680 was charged to the project's contingency provision to cover the higher-than-budgeted costs for architect fees, which was the result of the competitive tender process. The contingency provision currently has an available balance of $898,691.

B. Requirements for the remaining project period

49. As negotiations with the construction contractor had not yet been concluded at the time of reporting, the Secretary-General was not in a position to provide the projected amount of the construction contract. However, on the basis of planned negotiation strategies and other measures, such as the expected reuse of assets from the Tribunals, the Secretary-General expected that the contract would be awarded within the overall authorized project budget.

50. In addition to the in-house development of the conceptual design, the Mechanism has continued to explore other means to achieve the completion of the project within budget. During the reporting period, the Mechanism engaged further with the International Criminal Tribunal for Rwanda and the International Tribunal

for the Former Yugoslavia, particularly regarding assets, pursuant to paragraph 6 of resolution 68/267, in which the General Assembly encourages the Secretary-General to continue to explore the possibilities for the use of useable furniture and equipment of the Tribunals. Owing to the proximity of the International Criminal Tribunal for Rwanda to the new facility and its nearer closure date, the Mechanism and the Tribunal have already identified certain furniture, such as shelving, and equipment in the areas of security and information and communications technology, that may be able to be transferred to the new facility. Additionally, the project team will continue to identify and monitor any risks that may entail financial implications.

51. The Secretary-General remains committed to allocating resources in the most effective and efficient manner during the implementation of the remainder of the project to ensure that it is completed within the overall budget.

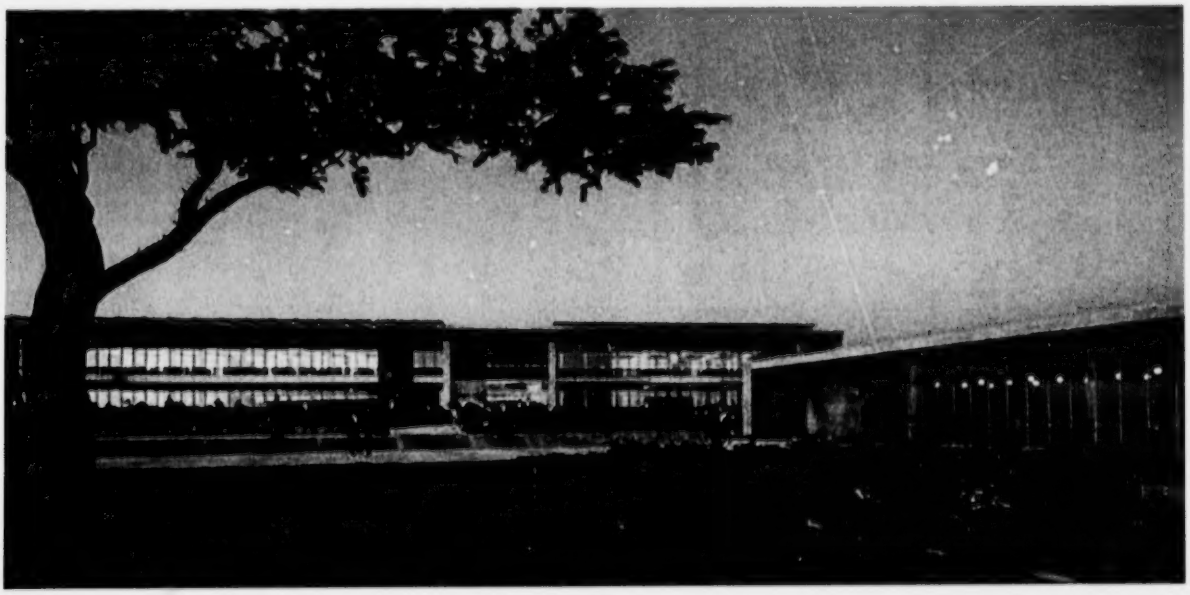
VI. Actions to be taken by the General Assembly

52. **The General Assembly is requested to take note of the progress made on the project during the reporting period.**

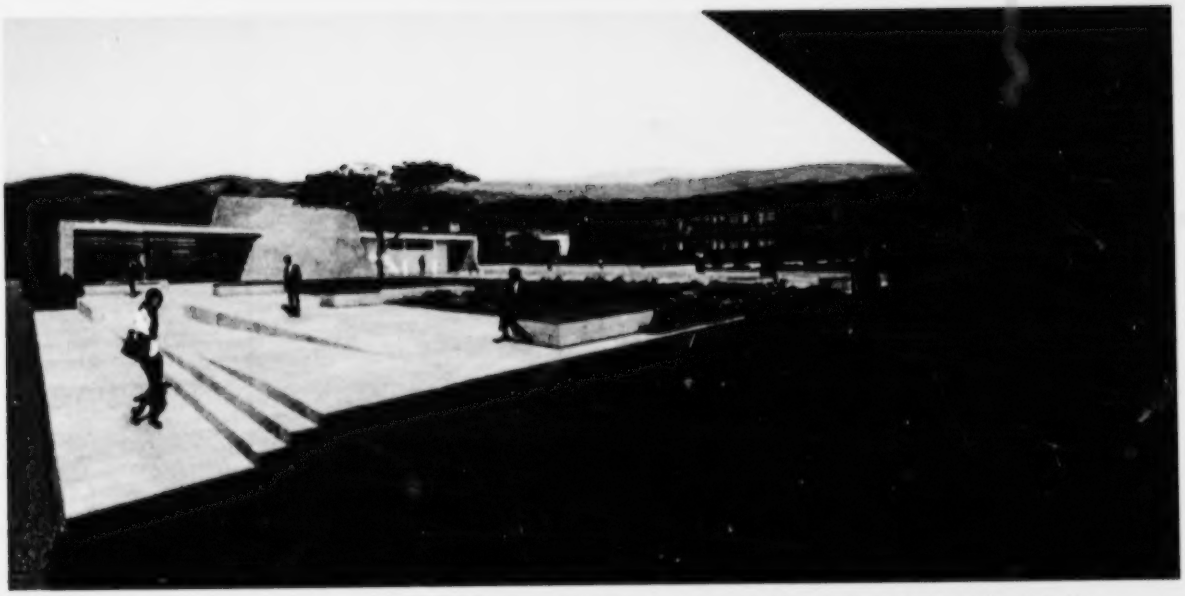
Annex I

Computer-generated renderings of the completed detailed design

Perspective view of the campus looking south



Perspective view of the office and archive buildings looking south-west



Perspective view of the court building and the office building looking south-east from the archive building

Annex II

Updated project schedule

Activity	As set out in A/66/754		As set out in A/67/696		As set out in A/68/724		Current projection		Status
	Start	Completion	Start	Completion	Start	Completion	Start	Completion	
General Assembly approval to proceed with schematic design	–	Early 2012	–	Early 2012	–	Early 2012	–	Early 2012	Completed
Site selection	Early 2012	Late 2012	Early 2012	Late 2012	Early 2012	Late 2012	Early 2012	Late 2012	Completed
Programming	Early 2012	Mid-2012	Early 2012	Late 2012	Early 2012	Late 2012	Early 2012	Late 2012	Completed
Recruitment of the project manager	Early 2012	Mid-2012	Mid-2012	Early 2013	Mid-2012	Mid-2013	Mid-2012	Mid-2013	Completed
Conceptual design	Late 2012	Early 2012	Mid-2012	Late 2012	Mid-2012	Late 2012	Mid-2012	Late 2012	Completed
Cost estimate	Early 2013	Mid-2013	Late 2012	Late 2012	Late 2012	Late 2012	Late 2012	Late 2012	Completed
General Assembly approval to proceed with design and construction	–	Mid-2013	–	Early 2013	–	Early 2013	–	Early 2013	Completed
Recruitment of architectural consultant	Mid-2012	Late 2012	Early 2013	Mid-2013	Mid-2013	Early 2014	Mid-2013	Early 2014	Completed
Design development and construction documents	Mid-2013	Early 2014	Mid-2013	Early 2014	Mid-2013	Early 2014	Mid-2013	Late 2014	Completed
Tender for construction contract	Early 2014	Late 2014	Early 2014	Late 2014	Mid-2014	Late 2014	Late 2014	Late 2014	Completed
Contract negotiations, award and mobilization	Late 2014	Mid-2015	Late 2014	Late 2014	Late 2014	Late 2014	Late 2014	Early 2015	In progress
Construction phase and interior fit-out	Mid-2015	Early 2017	Early 2015	Late 2015	Early 2015	Late 2015	Early 2015	Early 2016	–
Occupancy	–	Early/mid-2017	–	Late 2015	–	Late 2015	–	Early 2016	–